



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Talbot & Korvola

File: B-231569

Date: September 27, 1988

DIGEST

1. Protester's allegation that the contracting agency improperly evaluated proposals is without merit where the record shows that the evaluation comported with the solicitation's evaluation scheme, and that the agency's decision under the factors and subfactors specified by the protester were reasonable.
2. Where the solicitation advised offerors that proposals would be evaluated to assess the accuracy, reasonableness and realism of proposed costs and the probable cost to the government, the contracting agency's determination to increase two of protester's proposed costs for evaluation purposes was not unreasonable where the agency concluded that the protester, as a new firm, did not have an "experience basis" to support the explanation of its proposed escalation factors on direct labor, and no historical cost stability to give the agency confidence in the firm's proposed indirect labor rates.
3. Award to a higher-priced, technically superior offeror was not improper where the solicitation specifically advised offerors that technical factors were significantly more important than cost, and the agency's decision that the offer was worth the extra cost was not unreasonable.
4. Protest of agency decision not to set a procurement aside for small business is untimely, since it was filed well after proposals were due.

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DECISION

Talbot & Korvola (T&K) protest the selection of Peat Marwick Main & Co. (PMM), the incumbent contractor,^{1/} for award of a cost-plus-fixed-fee, level-of-effort contract for a 2-year base period with one 3-year option, under request for proposals (RFP) No. DE-RP04-87AL43522, issued by the Department of Energy (DOE) for general audit support services for the Western Regional Office of Inspector General. T&K contends that PMM's proposal was improperly evaluated, that T&K's proposed price was inappropriately increased in the evaluation, and that award to a higher priced offeror is not in the best interest of the government since T&K is technically qualified to perform the required services at a significantly lower proposed price. T&K, a small business, also complains that DOE, after initially determining to set this procurement aside for small businesses, changed its decision and issued the solicitation on an unrestricted basis.

We deny the protest in part and we dismiss it in part.

DOE published an announcement in the Commerce Business Daily (CBD) on June 5, 1987, requesting expressions of interest in the procurement and advising that the government reserved the right to restrict the procurement to small businesses if warranted by the responses received. After announcing in the CBD on June 25, however, that based on responses received the procurement had been designated as a small business set-aside, DOE subsequently withdrew the determination and published a CBD notice on July 22, advising that the procurement would be open to all firms.

The RFP, issued on September 18, 1987, required offerors to submit technical and cost proposals, and advised that technical factors were significantly more important than cost. The RFP stated that technical factors were weighted and would be point-scored. With regard to weight, the RFP noted that the most important technical factor was personnel qualifications, representing almost half of the total possible score; experience was next most important, representing almost one-fourth of the total score; understanding the scope of the work was the third most important

^{1/} Peat Marwick Mitchell and Co. and KMG Main Hurdman, the incumbent contractor, merged to form KPMG Peat Marwick Main & Co., effective April 1, 1987.

factor; and project management was the least important factor.^{2/} The RFP stated that cost proposals would be evaluated to assess the accuracy, reasonableness and realism of the proposed costs and the probable costs to the government, but that cost proposals would not be numerically weighted or point-scored. The RFP advised that the government would award the contract to the responsible offeror whose conforming proposal was most advantageous to the government, cost and other factors, specified in the solicitation, considered.

The RFP was mailed to 139 firms, and 11 proposals were timely received. After evaluation of proposals, and discussions with the five offerors who were determined to be in the competitive range, best and final offers (BAFOs) were requested. Final proposed costs ranged from a high of \$4,648,945, submitted by PMM, to a low of \$4,030,947. T&K's second lowest proposed cost of \$4,060,040 was increased in the evaluation by \$108,000 to reflect DOE's estimate of T&K's probable cost of \$4,168,000, making the firm's proposed cost third lowest. The other offerors' estimated probable costs equaled their proposed costs. Technical scores ranged from PMM's high score of 865 points out of a maximum 1,000 points to a low of 541 points. T&K's score of 694 points was second highest. After evaluation of cost and technical proposals, DOE selected PMM for contract award.

TECHNICAL EVALUATION

T&K alleges that DOE placed an inordinate amount of weight on PMM's prior DOE experience; incorrectly stated that PMM's staff has the most experience in expanded scope auditing (one of the experience subfactors); and, in contravention of the RFP's evaluation criteria, gave consideration to the security clearances of PMM's proposed employees. We find no legal merit in these allegations.

Initially, we point out that in reviewing protests of allegedly improper evaluations, our Office will not

^{2/} Each factor included subfactors on which proposals were numerically rated (from 0 for unacceptable to 10 for superior). The numerical rating was multiplied by the points assigned each subfactor. For example, the subfactor specialized experience was worth 10 points, and when multiplied by a numerical rating of 10 would yield 100 points. The maximum number of points under the evaluation scheme was 1,000.

substitute its judgment for that of the contracting agency, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with stated evaluation criteria, and whether there were any violations of procurement statutes and regulations. Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 CPD ¶ 309.

As to T&K's first point, PMM's DOE experience was considered under the subfactor "government related audit experience." The evaluation record shows that PMM's final score for this subfactor was 120 points and T&K's was 87 points. We see nothing unreasonable in this scoring difference since PMM's proposal reflected extensive DOE and non-DOE government-related audit experience, which was determined to be comprehensive and highly acceptable, whereas T&K, as a newly formed concern, had no government experience as a firm. (The firm was scored at 87 points, reflecting its proposing individuals who themselves had government experience.)

With regard to T&K's complaint about DOE's statement that PMM had the most staff experience with expanded scope auditing, the basis for the statement was the fact that PMM's proposed personnel have a total of more than 300 years of experience in the area, while the total for T&K's proposed staff is 235 years. DOE's statement therefore is an accurate one.

T&K's last argument is that in judging the relative merits of the proposals DOE improperly considered the fact that PMM's people had certain desired security clearances. In this respect, the RFP advised that in most instances the staff assigned to audits would be required to have DOE "Q" security clearances, and that the resumes of proposed personnel should indicate whether the individuals had security clearances. The RFP specifically stated, however, that while required of all staff, security clearances could be obtained after contract award.

DOE responds to T&K's argument by asserting that information on security clearances was required to be submitted for informational purposes, and it was not point-scored or considered in the evaluation of proposals. While T&K continues to speculate that security clearances were considered in PMM's favor, there is no support in the record for the firm's position. Although the record indicates that nearly all of PMM's proposed personnel do have the required level of security clearance, our review of the technical evaluation rating sheets indicates that security clearances were not point-scored and therefore did not affect PMM's total technical score. Accordingly, we find no merit in this portion of T&K's protest.

In view of the above, we have no basis for finding that DOE's evaluation of the technical proposals was improper.

COST ANALYSIS

T&K contends that DOE inappropriately increased its proposed price by \$108,000.

Federal Acquisition Regulation (FAR) § 15.605(d) (FAC 84-16) recognizes that in awarding a cost-reimbursement contract, the cost proposal should not be controlling since advance estimates of cost may not be valid indicators of final actual costs. The government's evaluation of estimated costs thus should determine what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of the actual costs that would be incurred by accepting a particular proposal. Because the contracting agency is in the best position to make determinations of the realism of proposed costs, we will not question those determinations unless they are shown to be unreasonable. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24.

DOE states that in evaluating cost proposals it developed probable costs in order to evaluate offerors in the competitive range on a comparable basis. The agency states that T&K's proposed 5-year escalation factors on direct labor (year 1 = 0%, year 2 = 5.18%, year 3 = .77%, year 4 = .99%, and year 5 = -1.6%) were changed to a more realistic factor of 3 percent annually. T&K had explained that the escalation factors proposed reflect salary increases in year 2 and assumptions with regard to staff turnovers in other years. DOE considered the explanation and determined that T&K's proposed escalation rates were not reasonable because the firm did not have the required staff on board and did not have an "experience basis" to support its explanation.

DOE also adjusted T&K's proposed indirect rates which generally decreased progressively over the 5-year contract period. DOE concluded that T&K's indirect rates for years 2 through 5 should not change significantly from the first year's rate because T&K, as a small business, did not have a large base to absorb indirect rates. Additionally, DOE noted that, since T&K was established in 1987, the firm had no historical cost stability, as did other firms in the competitive range, and the agency therefore had less confidence in T&K's proposed indirect rates.

In its comments on DOE's protest report, T&K states that, based on the nearly 75 years of combined experience of its

firm's three partners, it believes that the program overhead rates are realistic for a young, growing firm. T&K also states that, through growth, it anticipates a larger labor base throughout which to allocate indirect costs, and the net result to DOE would be lower overhead costs.

The record indicates that the agency analyzed the cost proposals of all five offerors in the competitive range. Only T&K's probable cost did not equal its proposed cost. We see nothing unreasonable in DOE's evaluation approach. As noted by DOE, T&K is a new firm with no historical cost stability and experience basis to support its explanations. T&K's mere disagreement with DOE's evaluation of its cost proposal does establish that the evaluation was unreasonable. Mark Dunning Industries, Inc.--Reconsideration, B-230058.2, May 26, 1988, 88-1 CPD ¶ 503.

SELECTION DECISION

T&K objects to the award on the basis of the cost difference (\$481,000) between PMM's and T&K's proposals.

In its final selection determination, DOE concluded that PMM was technically superior to the four other firms in the competitive range. DOE noted that the firm had a high percentage of personnel with CPAs and masters degrees on its proposed staff; had the most experience in government expanded scope auditing, which included an excellent record of significant findings and recommendations resulting in millions of dollars in savings for DOE and in improvements in DOE internal controls not quantifiable in dollars; had the highest score in the "understanding the scope of work" criterion; and received the highest ratings in the project management area because of the clarity and simplicity of its organization. After determining that the probable cost differential with its competitors was not so great as to override PMM's clear technical superiority, DOE selected PMM for contract award.

In a negotiated procurement, there is no requirement that award be made on the basis of the lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The judgment of the procuring agency concerning the significance of the difference in the technical merit of

offers is accorded great weight. Asset, Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 CPD ¶ 726.

The record indicates that DOE's determination was in accord with the RFP's stated evaluation criteria, under which technical factors were significantly more important than cost. PMM's score of 865 points was 171 points, or 24.6 percent, more than T&K's second highest score of 694 points. PMM's probable cost of \$4,648,945, on the other hand, was \$481,000, or 11.5 percent, more than T&K's probable cost of \$4,168,000. Also, PMM's probable cost was less than the government's \$5,000,000 cost estimate for the 5-year contract. Under the circumstances, the government's determination to select an offeror that was technically superior was not unreasonable.

UNRESTRICTED PROCUREMENT

T&K protests the withdrawal of the small business set-aside and contends that DOE may have been pressured by larger firms, particularly PMM, into withdrawing the offering to small businesses.

The fact that the procurement was not set aside for small businesses was apparent on the face of the solicitation, issued on September 18, 1987. Our Bid Protest Regulations require that a protest of alleged improprieties in a solicitation be filed before the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). T&K's protest of the withdrawal of the set-aside, filed well after that date, therefore, is untimely. See XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75.

The protest is denied in part and dismissed in part.

for *Seymour S. Hinchman*
James F. Hinchman
General Counsel